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Supreme Court of the United States

OCTOBER TERM, 1946

No. 94.

UNITED STATES,

Petitioner,

—against—

N. Y. RAYON IMPORTING CO., INC. (#2), and ALFRED L. ROSE, WALTER MENDELSOHN and BERNARD D. LANG, as Liquidating Directors and Trustees of N. Y. Rayon Importing Co., Inc. (#2),

Respondents.

No. 96.

N. Y. RAYON IMPORTING CO., INC. (#2), and ALFRED L. ROSE, WALTER MENDELSOHN and BERNARD D. LANG, as Liquidating Directors and Trustees of N. Y. Rayon Importing Co., Inc. (#2),

Petitioners,

—against—

UNITED STATES,

Respondent.

ON WRITS OF CERTIORARI TO THE COURT OF CLAIMS.

REPLY BRIEF FOR RESPONDENTS-PETITIONERS.

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THE COURT PRESS, N. Y. C.

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ON WRITS OF CERTIORARI TO THE COURT OF CLAIMS.

REPLY BRIEF FOR RESPONDENTS-PETITIONERS.

The Government's brief (p. 36) concedes that if the Act of March 3, 1875 be deemed applicable "the Government consents to the granting of the relief requested by the respondents in their cross-petition." Accordingly, the only question remaining is that raised by the Government's petition—does interest run on the judgments here involved payment of which was improperly withheld by the Comptroller General?

I.

The Comptroller General's excuse for non-payment.

A.

The Government's brief is largely a detailed mass of irrelevancies designed to create an unjustified atmosphere of complex conflicting claims.*

The findings below establish that in 1930, by the simplest form of corporate reorganization, Rayon #2 was incorporated, acquired all of the assets and assumed the liabilities of Rayon #1 and Nyrayco, and became their sole stockholder (R. 14, 15). This reorganization involved no change in the basic beneficial ownership (R. 15).

The Government's suggestion that the Comptroller General could have disregarded altogether the transfer of assets to Rayon #2, in view of the Revised Statutes: Section 3477 (31 U. S. Code 203) is not only unsound (those provisions being inapplicable to a successor in a corporate reorganization†), and con-

* The Government's brief repeatedly mentions that Société Pour Nouveaux Placements de Capitaux was impleaded in the Court of Claims actions and that other persons were cited by the Government. It omits to point out that the impleader of Société Pour Nouveaux Placements de Capitaux was on the Government's motion, that Société expressly disclaimed any claim (R. 6), and that the other persons were also unnecessarily cited by the Government as they neither had nor made any claim against the United States (R. 16, 21).

† *Seaboard Airline Ry. Co.* v. *United States*, 256 U. S. 655; *Kingan & Co.* v. *United States*, 71 C. Cls. 19; *Kawneer Company* v. *United States*, 100 C. Cls. 523; *Novo Trading Corp.* v. *Commissioner*, 113 F. (2d) 320; *Monarch Mills* v. *Jones*, 56 F. (2d) 180; *Romberg* v. *United States*, 40 F. Supp. 621. The Customs Regulations, 1931, Art. 1191 (quoted in Appendix B, p. 49 of the Government's brief) recognized the right to a refund check of parties that "have succeeded to the business or assets of the payee corporation".

trary to the Comptroller General's own practice (Decisions of the Comptroller General, 9 Comp. Gen. 72), but is wholly irrelevant. If the Government could disregard the transfer to Rayon #2, what excuse was there for not paying Rayon #1 and Nyrayco in whose names the judgments stood?

Rayon #2 was sole stockholder of Rayon #1 and Nyrayco and expressed willingness to have payment made either to it or to those corporations (R. 15, R. 17-18). Dissolved corporations in New York continue in existence for the purpose of collection of assets (N. Y. Gen. Corp. L. Sec. 29). Thus, the Government could with perfect safety have delivered the checks drawn to the order of Rayon #1 and Nyrayco.

The Comptroller General refused to pay, even after a consent judgment had been entered in New York on January 22, 1942 in an action in which all interested persons were parties* (R. 17).

The Government says that the consent judgment was not entered in an adversary suit. Surely that is immaterial. If there were no adversaries the consent judgment was ample warrant for payment.

After the consent judgment of January 1942 the Comptroller General had no conceivable excuse for holding up payment of the judgments.

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* The Government's brief is in error where it states that only the corporations were parties to this judgment. The parties included all the directors of the three corporations, the only parties on whose behalf any claim was ever made.

B.

The Government is driven to the position that "even if it be assumed that his actions were unreasonable" (p. 27) the Comptroller General could disregard the judgments of the Customs Court for an indefinite period, without obligation to make due compensation by the payment of interest.

Under the circumstances, the Court of Claims was thoroughly justified in holding that interest should run.* Such an award was not a penalty but the making of just compensation for money unlawfully exacted and withheld.

II.

Interest runs on judgments against the Government.

Basically, the Government contends that no matter what the situation, it may hide behind the doctrine of sovereign immunity, and, without being liable for interest, withhold payment of judgments as long as it chooses.

Congress has made it clear that such is not its present policy.

* The Government never questioned the jurisdiction of the Court of Claims to entertain these actions (28 U. S. C. 250, see *Tscrioni v. United States*, 94 C. Cls. 142). The jurisdiction of the Court of Claims to allow interest on judgments under the Act of March 3, 1875 and other statutes is well settled (*Benedict v. United States*, 66 C. Cls. 437; *Helvetia Milk Condensing Co. v. United States*, 77 C. Cls. 743; *Stewart v. United States*, 71 C. Cls. 126).

By statute after statute it has waived sovereign immunity, and by now has provided that the Government may be subjected to judgment in its own courts in almost every situation where a private corporation might be sued, even where liability is claimed on the basis of the negligence of its agents (Federal Tort Claims Act, Pub. L. 601, 79th Cong., 2nd Session).

The Congressional intention that interest shall be allowed on unpaid judgments duly entered against the United States is plain from the very statutes cited in the Government's brief:

1. The Tucker Act, Act of March 3, 1887, 28 U. S. C. 765, provides for interest on judgments rendered against the Government in the District Courts of the United States.

2. The Suits in Admiralty Act, 46 U. S. C. 743, provides for interest on decrees rendered against the United States for injuries caused by ships owned or operated by the United States or by government corporations.

3. The Public Vessels Act, 46 U. S. C. 782, provides for interest on judgments rendered for damage caused by a public vessel of the United States.

4. The Court of Claims Act, Section 177 of the Judicial Code, 28 U. S. C. 284, provides that interest is payable before and after judgment on Internal Revenue Tax Claims, and by plain implication, after judgment in the case of other claims (See *Stewart & Co. v. United States*, 71 C. Cls. 126, 131).

5. The Act of March 3, 1875, 31 U. S. C. 227, provides for withholding payment of a judgment where

there is a cross claim on behalf of the Government, but even then requires the payment of interest on the judgment to the extent that the cross claim is ultimately found to be without foundation:

6. By the recently adopted Federal Tort Claims Act, Act of August 2, 1946, Section 411, (Pub. L. 601, 79th Cong., 2nd Sess.) the Government not only subjects itself to liability for personal or property damage committed by its employees, in the same manner as if it were a private corporation, but expressly prescribes that interest shall run on judgments entered against it in such cases.

Surely, when Congress has provided in practically every conceivable situation (including tort claims) that interest should run on judgments rendered against the Government, it would be in outing caprice to assume that it intended that the Comptroller General could, without the obligation to pay interest, disregard judgments of the Customs Court involving repayment of the taxpayer's own money.

The situation is in all substantial respects like that in *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, where this Court held that although the statute there involved did not expressly provide for a waiver of immunity from suit, Congress by other statutes applicable to other corporations had indicated a general policy to waive immunity in the case of governmental corporations.

So here, Congress by numerous statutes has indicated a general policy to allow interest on unpaid judgments lawfully entered against the Government.

III.

Interest runs on Customs Court judgments where payment is withheld.

a. Customs Regulations.

The Government's brief cites various Customs Regulations relating to the payment of customs refund claims. None of these regulations has anything to do with the question of interest *after judgment* entered in the Customs Court. So far as they involve interest, they relate simply to the allowance of interest on "refunds" for the period *prior* to judgment. There is no mention of interest after judgment because the regulations contemplate that after the entry of judgment prompt reliquidation and payment will be made.*

b. Legal Effect of Customs Court Judgments.

Wholly without merit is the contention that a judgment of the Customs Court should not carry interest

* Appendix A to the Government's brief, the letter from the Commissioner of Customs to the Assistant Attorney General prepared pending this appeal, is both incompetent and irrelevant. It states that the *Customs Service* does not pay interest on refunds between the date of a Customs Court decision and the date of payment. The Customs Service would not be expected to pay interest on the judgments since the Customs Regulations provide for prompt reliquidation within a specified time, whereupon the Collector of Customs certifies the amount to the Treasury for payment,—all of which was done here (R. 16). It is the withholding by the Comptroller General after the Customs Service has done its duty that starts interest running. We do not claim interest from the date of judgment, but, in accordance with the Act of March 3, 1875, from the date when payment of the judgment "has been withheld" by the Comptroller General which, in a situation analogous to ours, has been held to be the date when the withheld checks were issued (*American Potash Co.* v. *United States*, 80 C. Cls. 160).

because fixing the exact dollar amount requires reliquidation by the Collector of Customs pursuant to the judgment. We are not asking interest prior to reliquidation.

Reliquidation is essentially part of the Customs Court procedure—a purely ministerial act of elementary arithmetic, analogous to the computation of costs by the clerk in a common law court.

Congress has not limited interest to common law money judgments but has allowed it on decrees in equity and admiralty, as the statutes cited above (pp. 5-6) clearly show.

Nor does the Act of March 3, 1875, as amended, confine interest to common law judgments. The language is "when *any final judgment* recovered against the United States *duly allowed by legal authority* shall be presented to the Comptroller General for payment".

The Customs Court is a court of law (*David L. Moss Co. Inc.* v. *United States*, 103 F. (2d) 395, 397, 19 U. S. C. 1518) under the statute its determinations are final (19 U. S. C. 1515) and the documents entered upon its decisions are formally entitled "judgments"; they are held to be final judgments (*Brooks* v. *Mandel Witte Co. Inc.*, 54 F. (2d) 992, 994).

The Government took no exception to the findings of the Court of Claims referring to the Customs Court determinations as "judgments" (R. 16).

Even where no judgment of any court was involved, this Court has held that a statute allowing interest on

"judgments" should be construed to allow interest on an administrative determination equivalent to a judgment.

In *National Bank of the Commonwealth* v. *Mechanics' National Bank of Trenton*, 94 U. S. 437, 438, the plaintiff had proved claims upon the insolvency of a national bank to the satisfaction of the Comptroller of the Currency, and its claims had been allowed. The plaintiff claimed interest from the date the claims were allowed, pursuant to Section 996 of the Revised Statutes, page 18, which provided that "judgments" in the District and Circuit Courts of the United States should bear interest. In opposition it was urged that no "judgment" had ever been entered in any court on plaintiffs' claims. This Court nevertheless unanimously allowed interest, writing, per Swayne, *J.* (p. 438):

> "If these claims had been put in judgment, whether in a court of the United States or in a state court of that State, the result as to interest upon the judgment would have been the same. It was unnecessary to reduce them to judgment, because they were proved to the satisfaction of the comptroller. After they were so proved, they were of the same efficacy as judgments, and occupied the same legal ground. Hence, they are within the equity, if not the letter, of these statutes, and bear interest as judgments would have done."

Ours is an *a fortiori* case, for here a legally authorized court of the United States entered formal final judgments (from which no appeal was taken by the United States) which were presented for payment

to the Comptroller General, and on which the Comptroller General withheld payment for more than eight years.

c. The Government's Authorities.

The Government has not cited a single case holding that interest does not run on a Customs Court judgment on which payment has been withheld by the Comptroller General. The Government's authorities hold merely that interest does not accrue on customs refunds *prior to the date of final judgment.**

The position of the Government, resting on technicalities, is an attempt to extend the obsolescent doctrine of sovereign immunity, contrary to the plain equities of the situation and to the policy expressed by Congress in various statutes.

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* Practically all the cases cited by the Government relate to the old practice by which an action was brought and a personal judgment obtained against the Collector of Customs, which the Government could assume by certificate of probable cause. Under that practice the Government paid interest on the refund up to the date of final judgment on appeal (*Cochrane* v. *Schell*, 107 U. S. 625 (which overruled *White* v. *Arthur*, 10 Fed. 80). In 1888 Congress reduced such interest to 3% prior to judgment (25 Stat. 6). Senator Hale, in urging the adoption of this statute because the payment of interest by the Government prior to judgment was exceptional, expressed the general Congressional understanding that interest did accrue against the Government after judgment (19 Cong. Rec. 702): "The rule generally is that the Government does not pay interest *until after judgment.*"

CONCLUSION.

Interest should be allowed from the dates of the refund checks of 1937 and 1938, and the determination of the Court of Claims should be modified accordingly.

Respectfully submitted,

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